

## PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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MAY 03 2006

<i>In re</i> Application:	)	Title:
Leung et. al.	)	Method and Apparatus for
	)	Overhead Messaging in a Wireless
	)	Communication System
Application No: 09/933,971	)	
	)	Confirmation No.: 7963
Filed: August 20, 2001	)	
	)	Examiner: Lee, Chi Ho A
	)	
Attorney Docket No.: 010439	)	Group Art Unit: 2663

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT**  
**UNDER 37 C.F.R. § 1.181(a)**

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants received a Notice of Abandonment dated March 13, 2006 for the above-identified application on March 22, 2006. Applicants hereby petition the Commissioner to withdraw holding of abandonment for the instant application.

In response to the Final Office Action dated May 5, 2005, Applicants filed a Notice of Appeal on November 3, 2005. The filing of the aforementioned Notice of Appeal was acknowledged by the U.S. Patent Office (hereinafter "the Office") as evidenced from the facsimile transmittal receipt by the Office (Exhibit A), and further recorded in the PAIR system (Exhibit B).

Attorney Docket No.: 010439  
Customer No.: 23696

1

**PATENT**

The 2-month time period for filing an appeal brief is merely a time period and not a shortened statutory period for reply pursuant to 35 U.S.C. § 133, which time period is extendable up to 5 months under 37 C.F.R. § 1.136(a). MPEP § 710.02(d).

In the instant case, the Notice of Appeal was filed by Applicants on November 3, 2005. The Office received the Notice of Appeal on the same date, i.e., November 3, 2005, via facsimile. The Office's date of receipt of the notice of appeal is the date from which the 2-month time period is measured. MPEP § 1205.01. The last day to file an appeal brief without extension of time is thus January 3, 2006, 2 months from November 3, 2005. Furthermore, the last date to file the appeal brief with extension of time is thus June 6, 2006, 5 months from January 3, 2006. Accordingly, no abandonment should be held for lack of response prior to June 6, 2006. For the foregoing reasons, Applicants respectfully submit that the aforementioned Notice of Abandonment was incorrectly sent out by the Office.

Accompanied with this Petition, Applicants file a Request for Continued Examination (RCE) pursuant to 37 C.F.R. § 1.114.

With all the requirements pursuant to 37 C.F.R. § 1.114 properly and timely submitted, Applicants respectfully request Applicants' petition be granted. In the event of any fees that may be due or any overpayments that may be associated with this petition, please charge or deposit the amount to Deposit Account No. 17-0026.

Respectfully submitted,

Dated: May 3, 2006

By: 

Kam T. Tam, Reg. No. 35,956  
(858) 651-5563

QUALCOMM Incorporated  
5775 Morehouse Drive  
San Diego, California 92121  
Telephone: (858) 658-5787  
Facsimile: (858) 658-2502

Attorney Docket No.: 010439  
Customer No.: 23696

**EXHIBIT A**

**Auto-Reply Facsimile Transmission**



TO: Fax Sender at +8586515400


Fax Information  
Date Received:  
Total Pages:

11/3/2005 6:18:00 PM [Eastern Standard Time]  
7 (including cover page)

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Received  
Cover  
Page  
=====>

11-03-06	16:11	From: 190	+8586515400	T-260	P.001	F-180
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5775 Markhouse Drive  
San Diego, CA 92121  
Fax: (658) 658-2502

**OFFICIAL COMMUNICATION**

**Facsimile Transmittal**

**DATE:** November 3, 2005

**TO:** AF  
Commissioner for Patents

**ATTN:** Examiner: Chl Ho A Lee  
Art Unit: 2603

**FAX NUMBER:** (571) 273-5900

**FROM:** Yan T. Tam, Attorney for Applicant  
Registration No. 35,756

**Total Number of Pages Sent:** 7 (including this transmittal cover sheet)

**FILING BY FACSIMILE:**

**ATTORNEY DOCKET NO.:** 01609

**ENCLOSED ARE:**

- Notice of Appeal (2 pages) in duplicate

**APPLICANT:** Nihon Lung et al.  
**ASSIGNEE:** QUALCOMM Incorporated  
**SERIAL NO.:** 06033571  
**FILED:** August 23, 2001  
**FOR:** Method and Apparatus for Overlaid Messaging in a Wireless Communication System

\*\*\*\*\*  
Please contact Sheryl Schoen at (658) 658-5102 if all pages do not transmit.

**Special Instructions:** THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL TO WHOM IT IS ADDRESSED AND CONTAINS INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately. Thank you!

PAGE 17 \* RCVD AT 11/3/2005 6:18:00 PM [Eastern Standard Time] \* SVR:USPTO-EFAX-423 \* DNIS:2735900 \* CSID:+8586515400 \* DURATION (mm-ss):01:03

**EXHIBIT B**

United States Patent and Trademark Office

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Search results as of: 5-3-2006::17:39:42 E.T.

Search results for application number: 09/933,971			
Application Number:	09/933,971	Customer Number:	23696
Filing or 371(c) Date:	08-20-2001	Status:	Abandoned – Failure to Respond to an Office Action
Application Type:	Utility	Status Date:	03-10-2006
Examiner Name:	LEE, CHI HO ANDREW	Location:	ELECTRONIC
Group Art Unit:	2663	Location Date:	-
Confirmation Number:	7963	Earliest Publication No:	US 2003-0228861 A1
Attorney Docket Number:	010439	Earliest Publication Date:	12-11-2003
Class/ Sub-Class:	370/338	Patent Number:	-
First Named Inventor:	Nikolai Leung, Takoma Park, MD (US)	Issue Date of Patent:	-
Title Of Invention:	Method and apparatus for overhead messaging in a wireless communication system		

## Search Options

<input type="checkbox"/> Assignments
<input type="checkbox"/> Continuity Data
<input type="checkbox"/> Display References
<input type="checkbox"/> Image File Wrapper

File History	
Date	Contents Description
03-13-2006	Mail Abandonment for Failure to Respond to Office Action
03-10-2006	Abandonment for Failure to Respond to Office Action
11-03-2005	Notice of Appeal Filed
11-03-2005	Request for Extension of Time - Granted
05-05-2005	Mail Final Rejection (PTOL - 326)
05-03-2005	Final Rejection
06-16-2003	Reference capture on IDS
08-20-2001	Reference capture on IDS
04-14-2005	Date Forwarded to Examiner
03-11-2005	Response after Non-Final Action
03-11-2005	Request for Extension of Time - Granted
06-16-2003	Information Disclosure Statement (IDS) Filed

08-20-2001	Information Disclosure Statement (IDS) Filed
09-08-2004	Mail Non-Final Rejection
09-03-2004	Non-Final Rejection
08-31-2004	Case Docketed to Examiner in GAU
03-24-2004	Reference capture on IDS
05-28-2003	Information Disclosure Statement (IDS) Filed
02-17-2004	Case Docketed to Examiner in GAU
01-29-2004	IFW TSS Processing by Tech Center Complete
01-22-2004	Case Docketed to Examiner in GAU
08-29-2003	Application Return from OIPE
08-29-2003	Application Is Now Complete
08-29-2003	Application Return TO OIPE
08-29-2003	Application Dispatched from OIPE
08-29-2003	Application Is Now Complete
08-28-2003	Additional Application Filing Fees
08-28-2003	An assertion that the nature of the legal entities having property rights to the patent authorizes t
08-28-2003	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic
10-01-2001	Notice Mailed--Application Incomplete--Filing Date Assigned
09-24-2001	Correspondence Address Change
08-28-2001	IFW Scan & PACR Auto Security Review
08-20-2001	Initial Exam Team nn